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ART UNIT	PAPER NUMBER
2124	6

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Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

Office Action Summary	Application No 09/706,914	Applicant(s) DWYER, LAWRENCE
	Examiner Qamrun Nahar	Art Unit 2124

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _3_ MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on _05 August 2003_ .

2a)☒ This action is **FINAL**.   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) _1-20_ is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) _1-20_ is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

    If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All b)☐ Some * c)☐ None of:

        1.☐ Certified copies of the priority documents have been received.

        2.☐ Certified copies of the priority documents have been received in Application No. _____ .

        3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

    a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .

4)☐ Interview Summary (PTO-413) Paper No(s). _____ .

5)☐ Notice of Informal Patent Application (PTO-152)

6)☐ Other: _____

DETAILED ACTION

1.   This action is in response to the amendment filed on 8/5/03.

2.   The objections to claims 3 and 16 are withdrawn in view of applicant's amendments.

3.   The rejection under 35 U.S.C. 112, second paragraph, to claim 11 is withdrawn in view

of applicant's amendments.

4.   Claims 3, 11 and 16 have been amended.

5.   Claims 1-20 are pending.

6.   Claims 1, 4, 6, 9, 11, 14, 16 and 19 stand finally rejected under 35 U.S.C. 102(b) as being

anticipated by Agarwal (U.S. 5,966,541).

7.   Claims 2-3, 5, 7-8, 10, 12-13, 15, 17-18 and 20 stand finally rejected under 35 U.S.C.

103(a) as being unpatentable over Agarwal (U.S. 5,966,541) in view of Brunmeier (U.S.

5,511,164).

Response to Amendment

Claim Rejections - 35 USC § 102

8.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the

basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9.   Claims 1, 4, 6, 9, 11, 14, 16 and 19 are rejected under 35 U.S.C. 102(b) as being

anticipated by Agarwal (U.S. 5,966,541).

Per Claim 1:

The Agarwal patent discloses:

- a method of providing recovery from an error condition in a computer program ("The

present invention works on program binaries and provides the ultimate end-to-end test. This

approach, based on binary code rewriting, works by taking an original binary file and producing

a new binary with certain useful properties, which result in test, protection, or repair functions.

... Another preferred embodiment performs assertion checking wherein a faulty or seemingly

working binary is instrumented and potential errors are flagged. For example, the

instrumentation can look for date-holding registers or memory locations in which the third and

fourth digits are zeros and flag a potential error condition so that a user can look at the code and

verify whether it is a real problem." in column 3, lines 11-16 and column 4, lines 57-63)

- parsing a source program for an error condition test; detecting if an error condition test

exists in said source program ("A preferred embodiment further comprises generating a data

flow representation of the binary code, choosing which values or variables to track, and using the

data flow representation to track the chosen values or variables, and to further aid in determining

where to install the software patches. ... The control and data flow representations can always be

generated from binary code. However, control and data flow representations can also be

generated from the source code when the source code is available. ... Referring back to FIG. 1B

with the aid of the data flow graph, the next step 83 is to identify or "color" the instructions that

potentially use dates or selected arguments. Starting with instructions identified as using dates

(or specific arguments) or as being instructions that obtain a date through a program input, data analysis is used to mark or color all the instructions that can be contaminated with a date (or with the specific argument). FIG. 7 shows a colored graph 400 for the case where variable b is a date. In this graph, the hashed codes N2, N3, N4, N5, and N8 correspond to the instructions that may have to be changed." in column 3, lines 43-52 and column 9, lines 66-67 to column 10, lines 1-9; In order to generate the control and data flow representations from the source code, the source code must be parsed. Identifying/coloring the instructions that potentially use dates or selected arguments is interpreted as detecting if an error condition test exist in the source program. That is, a colored instruction is interpreted as an error condition test)

- determining if error recovery is enabled when said error condition test is detected; creating an error recovery flag code when said error condition test exists and said error recovery is enabled; and inserting error recovery code in the computer program if error recovery is enabled ("Again referring to FIG. 1B, the actual rewritings 85, 87, 89 of the binary now takes place. First, the patches are installed 85. Each colored binary instruction is replaced by a set of binary instructions that implement the correct logic. For example, the instruction I3, c=a+b, is replaced in a manner similar to that described earlier. Next, branch and jump instructions are modified if their targets have shifted. This is necessary because when a single instruction is replaced with multiple instructions, the length of that segment of code increases. Thus, the addresses of blocks that follow the lengthened block will all be shifted. Therefore, the branches, procedure calls and jumps that reach a given line of code, or target, through a given old

address must also be changed to reflect the new shifted address." in column 10, lines 10-25, error

recovery is inherently enabled).

Per Claim 4:

The Agarwal patent discloses:

- detecting if a call to a subroutine exists in said source program; and creating an error

recovery flag test code to test if said error recovery is enabled and said subroutine exists

(column 9, lines 6-14, error recovery is inherently enabled).

Per Claims 6 & 9:

These are system versions of the claimed method discussed above (claims 1 and 4,

respectively), wherein all claim limitations also have been addressed and/or covered in cited

areas as set forth above, including means for performing the method of claims 1 and 4 (for

example, see column 16, lines 1-32). Thus, accordingly, these claims are also anticipated by

Agarwal.

Per Claims 11 (Amended) & 14:

These are system versions of the claimed method discussed above (claims 1 and 4,

respectively), wherein all claim limitations also have been addressed and/or covered in cited

areas as set forth above, including logic configured to perform the method of claims 1 and 4, and

"a compiler configured to parse a source program" (for example, see column 9, lines 15-32).

Thus, accordingly, these claims are also anticipated by Agarwal.

Per Claims 16 (Amended) & 19:

These are computer readable medium versions of the claimed method discussed above

(claims 1 and 4, respectively), wherein all claim limitations also have been addressed and/or

covered in cited areas as set forth above, including logic for performing the method of claims 1

and 4 (for example, see column 4, lines 40-47). Thus, accordingly, these claims are also

anticipated by Agarwal.

Claim Rejections - 35 USC § 103

10.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in
> section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are
> such that the subject matter as a whole would have been obvious at the time the invention was made to a person
> having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the
> manner in which the invention was made.

11.   Claims 2-3, 5, 7-8, 10, 12-13, 15, 17-18 and 20 are rejected under 35 U.S.C. 103(a) as

being unpatentable over Agarwal (U.S. 5,966,541) in view of Brunmeier (U.S. 5,511,164).

Per Claim 2:

The rejection of claim 1 is incorporated, and Agarwal further teaches generating code to

perform said error condition test if said error condition test exists (column 10, lines 10-25; a set

of binary instructions are generated to perform the error condition test if the error condition test

exists, that is, if there is a colored binary instruction). Agarwal does not explicitly teach creating program abort code if said error condition test exists and error recovery is not enabled. Brunmeier teaches creating program abort code if said error condition test exists and error recovery is not enabled (column 30, lines 25-27).

It would have been obvious to one having ordinary skill in the computer art at the time of the invention was made to modify the method disclosed by Agarwal to include creating program abort code if said error condition test exists and error recovery is not enabled using the teaching of Brunmeier. The modification would be obvious because one of ordinary skill in the art would be motivated to exit a program if a fatal error is detected (Brunmeier, column 30, lines 25-27 and see Fig. 17, items 1428 and 1430).

Per Claim 3 (Amended):

The rejection of claim 2 is incorporated, Brunmeier further teaches generating code to conditionally skip said program abort code and said error recovery flag code when said error condition test exists and said error recovery is not enabled (column 31, lines 16-26).

Per Claim 5:

The rejection of claim 4 is incorporated, and further, Agarwal does not explicitly teach generating code to conditionally skip said program abort code and said error recovery flag test code when said error condition test exists and said error recovery is not enabled. Brunmeier teaches generating code to conditionally skip said program abort code and said error recovery

flag test code when said error condition test exists and said error recovery is not enabled (column 30, lines 25-27).

It would have been obvious to one having ordinary skill in the computer art at the time of the invention was made to modify the method disclosed by Agarwal to include generating code to conditionally skip said program abort code and said error recovery flag test code when said error condition test exists and said error recovery is not enabled using the teaching of Brunmeier. The modification would be obvious because one of ordinary skill in the art would be motivated to reduce execution time of program.

Per Claims 7, 8 & 10:

These are system versions of the claimed method discussed above (claims 2, 3 and 5, respectively), wherein all claim limitations also have been addressed and/or covered in cited areas as set forth above. Thus, accordingly, these claims are also obvious.

Per Claims 12, 13 & 15:

These are system versions of the claimed method discussed above (claims 2, 3 and 5, respectively), wherein all claim limitations also have been addressed and/or covered in cited areas as set forth above. Thus, accordingly, these claims are also obvious.

Per Claims 17, 18 & 20:

These are computer readable medium versions of the claimed method discussed above (claims 2, 3 and 5, respectively), wherein all claim limitations also have been addressed and/or covered in cited areas as set forth above. Thus, accordingly, these claims are also obvious.

Response to Arguments

12.   Applicant's arguments with respect to claims 1-20 have been fully considered but they are not persuasive.

In the remarks, the applicant argues that:

a)   With reference to the Office Action rejection directed at Applicant's "parsing a source program for an <u>error condition *test*</u>; detecting *if* an error condition *test exists* in said source program" (Emphasis added), Applicant draws attention to Agarwal (col. 4, lines 40 - 43), which states "The present invention instruments original binary code <u>to create augmented or remedial binary code</u>. The augmented or remediated binary code then perform many useful functions, such as error detecting and repair." (Emphasis added). Applicant has been unable to find in Agarwal, disclosure related to at least, Applicant's "parsing a source for an error condition test." Furthermore, Applicant fails to find in Agarwal any reference to "an error condition test" that may be located in a source program. It must be pointed out that looking for an error condition, such as disclosed by Agarwal, is distinguishable from Applicant's looking for an error condition test. While Agarwal addresses the issue of "determining the source and nature of an error within a computer system" (Emphasis added) as his title suggests, and consequently, as stated in the Office Action, "in determining where to install the software patches," Applicant's claim 1 is

directed towards "detecting if an error condition test exists in said source program" and

consequently "inserting error recovery code in the computer program if error recovery is

enabled."

Applicant respectfully asserts that the Office Action rejection of claim 1 under 35 U.S. C.

§ 102 is improper because Agarwal does not disclose the elements of Applicant's claim 1.

Specifically, Agarwal does not at least disclose Applicant's "detecting if an error condition test

exists in said source program."

Therefore, Applicant requests withdrawal of this rejection to claim 1.

Examiner's response:

a)   Examiner strongly disagrees with applicant's assertion that Agarwal fails to disclose the

claimed limitations recited in claim 1. Agarwal clearly shows each and every limitation in claim

1. As previously pointed out in Paper No. 4, Agarwal teaches parsing a source program for an

error condition test; detecting if an error condition test exists in said source program (column 3,

lines 43-52 and column 9, lines 66-67 to column 10, lines 1-9; In order to generate the control

and data flow representations from the source code, the source code must be parsed.

Identifying/coloring the instructions that potentially use dates or selected arguments is

interpreted as detecting if an error condition test exist in the source program. That is, a colored

instruction is interpreted as an error condition test). In addition, see the rejection above in

paragraph 9 for rejection to claim 1.

In the remarks, the applicant argues that:

b)   Since independent claim 1 is allowable over the prior art references of record, then

dependent claim 4 is allowable as a matter of law. In re Fine, 837 F.2d 1071 (Fed Cir. 1988).

        Furthermore, Applicant has been unable to find in Agarwal, at least "creating an error

recovery flag test code to test if said error recovery is enabled and said subroutine exists," which

is a part of Applicant's claim 4.

        Accordingly, Applicant requests withdrawal of this rejection to claim 4.

Examiner's response:

b)   Examiner strongly disagrees with applicant's assertion that Agarwal fails to disclose the

claimed limitations recited in claim 4. Agarwal shows each and every limitation in claim 4. As

previously pointed out in Paper No. 4, Agarwal teaches creating an error recovery flag test code

to test if said error recovery is enabled and said subroutine exists (column 9, lines 6-14; The

Examiner has already pointed out that error recovery is inherently enabled in the rejection of

claim 1). In addition, see the rejection above in paragraph 9 for rejection to claim 4.

In the remarks, the applicant argues that:

c)   Claim 6 is an independent means claim, which includes, in pertinent part "means for

parsing a source program for an error condition test" and also "means for detecting if an error

condition test exists in said source program." Claim 9 depends on claim 6, and includes, in

pertinent part, "means for creating an error recovery flag test code to test if said error recovery is

enabled and said subroutine exists."

Applicant has been unable to find in Agarwal, disclosure <u>related to means</u> as stated in

Applicant's claim 6 and/or claim 9. Applicant respectfully suggests that the Office Action has

failed to stated <u>where</u> in Agarwal a disclosure is provided that is relevant to at least, Applicant's

means of claims 6 and 9. In more specific detail, Applicant has been unable to find in Agarwal,

at least, Applicant's "means for parsing a source for an error condition test," (part of claim 6)

and/or "means for creating an error recovery flag test code to test if said error recovery is enabled

and said subroutine exists" (part of claim 9). This maybe attributed, in part, because Agarwal

does not have "an error condition test" that may be located in a source program.

Applicant respectfully asserts that the Office Action rejection of claims 6 and 9 under 35

U.S. C. § 102 is improper because Agarwal does not disclose the means elements of Applicant's

claims 6 and 9. Therefore, Applicant requests withdrawal of this rejection to claims 6 and 9.

Examiner's response:

c)   Examiner strongly disagrees with applicant's assertion that Agarwal fails to disclose the

claimed limitations recited in claims 6 and 9. Agarwal clearly shows each and every limitation

in claims 6 and 9. Agarwal teaches a system that provides means for performing the method of

claims 1 and 4 (for example, see column 16, lines 1-32). The Examiner has already addressed

the applicant's arguments regarding an error condition test in the Examiner's Response (a)

above. In addition, see the rejection above in paragraph 9 for rejection to claims 6 and 9.

In the remarks, the applicant argues that:

d)   Claim 11 is an independent system claim, which includes, in pertinent part, "a compiler

configured to parse a source program" and "error condition test logic configured to detect

whether an error condition test exists in said source program." Claim 14 depends on claim 11,

and includes, in pertinent part, "error recovery flag test code generator that generates code to test

if said error recovery is enabled and said subroutine exists."

Applicant has been unable to find in Agarwal, disclosure related to a compiler, and/or

error condition test logic, as incorporated in Applicant's claim 6; and/or "an error recovery flag

test code generator" that is part of claim 14. Applicant respectfully suggests that the Office

Action has failed to stated where in Agarwal a disclosure is provided that is relevant to the

elements pertaining to Applicant's claims 11 and 14. In more specific detail, Applicant has been

unable to find in Agarwal, at least, Applicant's "error condition test logic configured to detect

whether an error condition test exists in said source program" (part of claim 11).

This may be attributed, in part, because Agarwal does not have "an error condition test"

that may be located in a source program.

Applicant respectfully asserts that the Office Action rejection of claims 11 and 14 under

35 U.S. C. § 102 is improper because Agarwal does not disclose the elements of Applicant's

claims 11 and 14. Therefore, Applicant requests withdrawal of this rejection to claims 11 and 14.

Examiner's response:

d)   Examiner strongly disagrees with applicant's assertion that Agarwal fails to disclose the

claimed limitations recited in claims 11 and 14. Agarwal clearly shows each and every

limitation in claims 11 and 14. Agarwal teaches a system that provides logic configured to

perform the method of claims 1 and 4, including "a compiler configured to parse a source

program" (for example, see column 9, lines 15-32). The Examiner has already addressed the

applicant's arguments regarding an error condition test in the Examiner's Response (a) above. In

addition, see the rejection above in paragraph 9 for rejection to claims 11 and 14.

In the remarks, the applicant argues that:

e)   Currently amended claim 16 is an independent <u>computer-readable medium</u> claim, which

includes, in pertinent part "logic for parsing a source program for an error condition test" and

also "logic for detecting if an error condition test exists in said source program." Claim 19

depends on claim 16, and includes, in pertinent part, "logic for creating an error recovery flag

test code to test if said error recovery is enabled and said subroutine exists."

Applicant has been unable to find in Agarwal, disclosure <u>related to logic</u> as stated in

Applicant's claim 16 and/or claim 19. Applicant respectfully suggests that the Office Action has

failed to stated <u>where</u> in Agarwal a disclosure is provided that is relevant to at least, Applicant's

logic of claims 16 and 19. In more specific detail, Applicant has been unable to find in Agarwal,

at least, Applicant's "logic for parsing a source for an error condition test," (part of claim 16)

and/or "logic for creating an error recovery flag test code to test if said error recovery is enabled

and said subroutine exists" (part of claim 19). This may be attributed, in part, because Agarwal

does not have "an error condition test" that maybe located in a source program.

Applicant respectfully asserts that the Office Action rejection of claims 16 and 19 under

35 U.S. C. § 102 is improper because Agarwal does not disclose the means elements of

Applicant's claims 16 and 19. Therefore, Applicant requests withdrawal of this rejection to

claims 16 and 19.

Examiner's response:

e)   Examiner strongly disagrees with applicant's assertion that Agarwal fails to disclose the

claimed limitations recited in claims 16 and 19. Agarwal clearly shows each and every

limitation in claims 16 and 19. Agarwal teaches a computer readable medium that provides logic

for performing the method of claims 1 and 4 (for example, see column 4, lines 40-47). The

Examiner has already addressed the applicant's arguments regarding an error condition test in

the Examiner's Response (a) above. In addition, see the rejection above in paragraph 9 for

rejection to claims 16 and 19.

In the remarks, the applicant argues that:

f)   Agarwal (col. 10, lines 10-25) teaches "binary rewriting 85, 87, 89," which is one of the

steps (step 5) for date remediation (refer Agarwal col. 7, lines 50-57). Applicant respectfully

asserts that Agarwal does not teach at least, Applicant's claim 2 that states in pertinent part,

"generating code to perform said error condition test if said error condition test exists" (Emphasis

added). Additionally, as pointed out in the Office Action, Agarwal "does not explicitly teach

program abort code if said error condition test exists and error recovery is not enabled." The

Office Action further alleges that Brunmeier teaches "creating program abort code if said error

condition test exists and error recovery is not enabled (col. 30, lines 25-27)." While Brunmeier

(col. 30, lines 25-27) may teach "program abort code" as alleged in the Office Action, Applicant

wishes to point out that the Office Action appears to be confusing the presence and/or operation

of such code in Agarwal and/or Brunmeier, with Applicant's "detecting if an error condition test

exists in said source program." (Emphasis added) as stated in independent claim 1 from which

claim 2 is dependent.

Consequently, Applicant respectfully asserts that prior art references Agarwal and

Brunmeier do not teach or suggest all of Applicant's claim 2 limitations.

Examiner's response:

f)   Examiner strongly disagrees with applicant's assertion that the combination of Agarwal

and Brunmeier fails to disclose the claimed limitations recited in claim 2. The combination of

Agarwal and Brunmeier clearly shows each and every limitation in claim 2. The Examiner has

already addressed the applicant's arguments regarding detecting if an error condition test exists

in said source program in the Examiner's Response (a) above. Furthermore, as previously

pointed out in Paper No. 4, Agarwal teaches generating code to perform said error condition test

if said error condition test exists (column 10, lines 10-25; a set of binary instructions are

generated to perform the error condition test if the error condition test exists, that is, if there is a

colored binary instruction). In addition, see the rejection above in paragraph 11 for rejection to

claim 2.

In the remarks, the applicant argues that:

g)   Furthermore, Applicant respectfully asserts that the Office Action rejection of claim 2

under 35 U.S.C. 103(a) is improper because neither Agarwal nor Brunmeier expressly or

impliedly provide some suggestion or motivation to one of ordinary skill in the art, to modify

either reference or to combine the two references. In this regard, the Office Action states in

pertinent part that "It would have been obvious to one of ordinary skill in the computer art at the

time of the invention was made to modify the method disclosed by Agarwal to include creating

program abort code if said error condition test exists and error recovery is not enabled using the

teaching of Brunmeier. The modification would be obvious because one of ordinary skill in the

art would be motivated to exit a program if a fatal error is detected." (Emphasis added).

While such a motivation may be applicable if a fatal error is detected in a program,

Agarwal does not provide a motivation to create program abort code based on the existence of an

error condition test, such as the test that is detected upon Applicant's "parsing a source program

for an error condition test" (pertinent part of Applicant's independent claim 1).

Applicant notes with regret that the Office Action does not indicate where a teaching or

suggestion of the above-quoted motivation may be found in the cited references. Even if such a

reason were to exist, Applicant submits, as explained earlier, that the combination of cited

references fails to disclose, teach or suggest each element in claim 2.

Applicant respectfully asserts that the Office Action rejection of claim 2 under 35 U.S.C.

103(a) is improper because Agarwal does not provide suggestion or motivation to modify the

reference or to combine reference teachings; nor does the proposed combination of Agarwal and

Brunmeier expressly teach or suggest all of the Applicant's claim limitations. Consequently,

Applicant requests withdrawal of this rejection to claim 2.

Examiner's response:

g)   Examiner strongly disagrees with applicant's assertion that the combination of Agarwal

and Brunmeier fails to disclose the claimed limitations recited in claim 2. The combination of

Agarwal and Brunmeier clearly shows each and every limitation in claim 2. The Examiner has

already addressed the applicant's arguments regarding parsing a source program for an error

condition test in the Examiner's Response (a) above. In addition, the Examiner has already

addressed the applicant's arguments regarding the claim limitations of claim 2 in the Examiner's

Response (f) above.

Furthermore, Brunmeier provides the motivation to modify, that is, the modification

would be obvious because one of ordinary skill in the art would be motivated to exit a program if

a fatal error is detected (column 30, lines 25-27 and see Fig. 17, items 1428 and 1430). In

addition, see the rejection above in paragraph 11 for rejection to claim 2.

In the remarks, the applicant argues that:

h)   Currently amended claim 3 depends on claim 2, which is dependent on claim 1. Since

independent claim 1 and dependant claim 2 are allowable over the prior references of record,

then dependent claim 3 is also allowable as a matter of law. In re Fine, 837 F. 2d 1071 (Fed. Cir.

1988)

Furthermore, Applicant submits that the Office Action rejection of claim 3 under 35

U.S.C. 103(a) is improper because the proposed combination of Agarwal and Brunmeier do not

at least expressly teach or suggest all of Applicant's claim limitations. Specifically, the proposed

combination does not teach or suggest at least Applicant's "generating code to conditionally skip

said program abort code and said error recovery flag code <u>when</u> said error condition <u>test</u> exists

and said error recovery is <u>not enabled</u>." (Emphasis added)

Consequently, Applicant requests withdrawal of this rejection to claim 3.

Examiner's response:

h)   Examiner strongly disagrees with applicant's assertion that the combination of Agarwal

and Brunmeier fails to disclose the claimed limitations recited in claim 3. The combination of

Agarwal and Brunmeier clearly shows each and every limitation in claim 3. The Examiner has

already addressed the applicant's arguments regarding an error condition test in the Examiner's

Response (a) above. Brunmeier further teaches generating code to conditionally skip said

program abort code and said error recovery flag code when said error condition test exists and

said error recovery is not enabled (column 31, lines 16-26). In addition, see the rejection above

in paragraph 11 for rejection to claim 3.

In the remarks, the applicant argues that:

i)   Claim 5 depends on claim 4, which is dependent on claim 1. Since independent claim 1

and dependant claim 4 are allowable over the prior references of record, then dependent claim 5

is also allowable as a matter of law. In re Fine, 837 F. 2d 1071 (Fed. Cir. 1988).

Consequently, Applicant requests withdrawal of this rejection to claim 5.

Examiner's response:

i)   Examiner strongly disagrees with applicant's assertion that the combination of Agarwal

and Brunmeier fails to disclose the claimed limitations recited in claim 5. The combination of

Agarwal and Brunmeier clearly shows each and every limitation in claim 5. The Examiner has

already addressed the applicant's arguments regarding claims 1 and 4 in the Examiner's

Response (a) and (b) above, respectively. In addition, see the rejection above in paragraph 11 for

rejection to claim 5.

In the remarks, the applicant argues that:

j)   Claims 7, 8, and 10 depend directly or indirectly on independent claim 6. Since

independent claim 6 is allowable over the prior references of record, then dependent claim 7, 8,

and 10 are also allowable as a matter of law. In re Fine, 837 F. 2d 1071 (Fed. Cir. 1988).

        Consequently, Applicant requests withdrawal of this objection to claims 7, 8 and 10.

Examiner's response:

j)   Examiner strongly disagrees with applicant's assertion that the combination of Agarwal

and Brunmeier fails to disclose the claimed limitations recited in claims 7, 8 and 10. The

combination of Agarwal and Brunmeier clearly shows each and every limitation in claims 7, 8

and 10. The Examiner has already addressed the applicant's arguments regarding claim 6 in the

Examiner's Response (c) above. In addition, see the rejection above in paragraph 11 for

rejection to claims 7, 8 and 10.

In the remarks, the applicant argues that:

k)   Claims 12, 13, and 15 depend directly or indirectly on independent claim 11. Since

independent claim 11 is allowable over the prior references of record, then dependent 12, 13, and

15 are also allowable as a matter of law. In re Fine, 837 F. 2d 1071 (Fed. Cir. 1988).

Consequently, Applicant requests withdrawal of this rejection to claims 12, 13, and 15.

Examiner's response:

k)   Examiner strongly disagrees with applicant's assertion that the combination of Agarwal

and Brunmeier fails to disclose the claimed limitations recited in claims 12, 13, and 15. The

combination of Agarwal and Brunmeier clearly shows each and every limitation in claims 12, 13,

and 15. The Examiner has already addressed the applicant's arguments regarding claim 11 in the

Examiner's Response (d) above. In addition, see the rejection above in paragraph 11 for

rejection to claims 12, 13, and 15.

In the remarks, the applicant argues that:

l)   Claims 17, 18, and 20 depend directly or indirectly on independent claim 16. Since

independent claim 16 is allowable over the prior references of record, then 17, 18, and 20 also

allowable as a matter of law. In re Fine, 837 F. 2d 1071 (Fed. Cir. 1988).

Consequently, Applicant requests withdrawal of this rejection to claims 17, 18, and 20.

Examiner's response:

l)   Examiner strongly disagrees with applicant's assertion that the combination of Agarwal

and Brunmeier fails to disclose the claimed limitations recited in claims 17, 18, and 20. The

combination of Agarwal and Brunmeier clearly shows each and every limitation in claims 17, 18,

and 20. The Examiner has already addressed the applicant's arguments regarding claim 16 in the

Examiner's Response (e) above. In addition, see the rejection above in paragraph 11 for

rejection to claims 17, 18, and 20.

Conclusion

13.   **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time

policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

MONTHS of the mailing date of this final action and the advisory action is not mailed until after

the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

however, will the statutory period for reply expire later than SIX MONTHS from the mailing

date of this final action.

14.   Any inquiry concerning this communication from the examiner should be directed to

Qamrun Nahar whose telephone number is (703) 305-7699. The examiner can normally be

reached on Mondays through Thursdays from 9:00 AM to 6:30 PM. The examiner can also be

reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kakali Chaki, can be reached on (703) 305-9662. The fax phone number for the organization where this application or processing is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.

QN
October 17, 2003

KAKALI CHAKI
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100